

CITY OF FAIRFIELD

RESOLUTION NO. 2015 - 189

**RESOLUTION OF THE CITY COUNCIL APPROVING UPDATED VEHICLE
AGREEMENT WITH SOLANO COUNTY TRANSIT JOINT POWERS AUTHORITY
(DBA SOLTRANS)**

WHEREAS, the City of Fairfield leased ten (10) buses from the City of Vallejo in 2006 to provide SolanoExpress services; and

WHEREAS, the City of Vallejo relinquished transit operations and ownership of all vehicles to the Solano County Joint Powers Authority (dba SolTrans); and

WHEREAS, SolTrans has provided the City of Fairfield an updated lease agreement with the intent to maintain the current lease program recognizing the transition of ownership from the City of Vallejo to SolTrans; and

WHEREAS, the City of Fairfield has reviewed the updated agreement and wishes to maintain the use of the vehicles to provide SolanoExpress commuter services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The City Manager is authorized to execute the updated vehicle lease agreement with the Solano County Joint Powers Authority (dba SolTrans).

PASSED AND ADOPTED this 18th day of August 2015, by the following vote:

AYES: COUNCILMEMBERS: Price/Timm/Bertani/Moy/Vaccaro

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

ABSTAIN: COUNCILMEMBERS: NONE

Nancy T. Price
MAYOR

ATTEST:

Karen L. Rees
CITY CLERK

pw

VEHICLE AGREEMENT
(SOLANO COUNTY TRANSIT—CITY OF FAIRFIELD)

THIS VEHICLE AGREEMENT dated the 25th day of August, 2015 ("Effective Date") by and between SOLANO COUNTY TRANSIT, a joint powers authority (hereinafter called "SolTrans") and the CITY OF FAIRFIELD, a municipal corporation (hereinafter called "City").

RECITALS

- A. The City desires to continue to use SolTrans's vehicles and equipment described in the list attached as Schedule "A" (hereinafter collectively called the "equipment"), and
- B. The City has had possession and use of the equipment since 2006, pursuant to an agreement between the City and the City of Vallejo executed September 2006 (the "Vallejo Agreement").

The purpose of this Agreement is to replace the Vallejo Agreement to reflect that the fact that title to the equipment has been conveyed by Vallejo to SolTrans.

- C. SolTrans owns the equipment and agrees to lease the listed vehicle(s) to City.
- D. The equipment has been purchased with Federal Transit Administration ("FTA") funds and FTA retains an interest in the equipment.

AGREEMENT

In mutual consideration for the promises set forth below, the parties agree as follows:

1. LEASE

SolTrans agrees to provide to the City and the City agrees to accept from SolTrans the equipment, together with all accessories, additions, repairs and replacement parts affixed to, now or in the future for the term set forth below.

2. TERM

The term of this Agreement shall commence on the Effective Date and shall be terminated on that date of the following events first to occur:

- a) That date being thirty (30) days after the City has delivered to SolTrans written notice of its intention to terminate this Agreement; or
- b) That date being thirty (30) days after SolTrans has delivered to the City written notice of its intention to terminate this Agreement; or

- c) City fails to operate intercity transit service on the Interstate 80 corridor connecting Solano County and Contra Costa County; or
- d) City purchases or otherwise acquires vehicles to replace the leased vehicles.

3. ACCEPTANCE

The City acknowledges that it has inspected the equipment and accepts the equipment as being in a good state of repair. City agrees to return the equipment in the same condition as received, including tire tread depth and brake shoe thickness as identified prior to receipt with all other normal wear and tear excepted. City agrees, upon the expiration of this Agreement or earlier termination, to return the equipment to 1850 Broadway, Vallejo, CA.

4. USE

The City shall have the control of such equipment, while the equipment is in its possession, in the same manner as though City were the absolute owner. City shall observe and adhere to all applicable operating procedures and guidelines that relate to the use of the equipment. City agrees that the use and operation of the equipment is subject to FTA requirements contained in SolTrans' Master Grant Agreement with FTA.

5. OWNERSHIP

Title to and ownership of the equipment shall at all times be and remain in the name of SolTrans and the City shall have no right of property therein, except the right to use the equipment in accordance with the terms of this Agreement.

6. MAINTENANCE AND REPAIRS

- A. City agrees that all maintenance, breakdowns, and repairs, including necessary parts, are at City's sole expense and shall not be billed to SolTrans. City is to keep records on a Daily Driver Check List to assure that all systems, fluid levels, etc., are being properly checked and maintained. City will maintain the equipment in good repair and operating condition, and will furnish at its expense all parts and supplies necessary to comply with this provision including, but not limited to, tires, brakes, tubes, fuel, lubricants, oil and anti-freeze, and further, City shall keep the equipment properly stored. City shall be liable to SolTrans for any failure or neglect of City, its officers, agents, and employees to care for or make repairs as needed.
- B. The City shall maintain and keep the equipment in good condition and repair at no cost to SolTrans and to the satisfaction of SolTrans. City will comply with all maintenance as set forth by FTA with reference to federally funded equipment. In addition, City agrees to provide SolTrans the following:
 - i. Maintenance Plan including written procedures for maintaining the equipment.
 - ii. Annual maintenance report for each vehicle due at the end of the fiscal year beginning June 30, 2015 and continuing annually thereafter.
 - iii. A copy of the annual CHP report and Preventative Maintenance records on an annual basis.

7. INSPECTION

SolTrans shall have the right to inspect the equipment, without prior notice, at all reasonable times during the term of this Agreement.

8. ALTERATION

The City shall not alter or add or allow any other party to alter or add to the equipment in any way without the prior written approval-of SolTrans. Any alterations, or additions to the equipment, which are approved by SolTrans, shall become and remain the property of SolTrans.

9. MOTOR VEHICLE INSPECTION

The City shall be responsible for ensuring that the equipment is maintained in compliance with California State Law. The City shall be responsible for ensuring the equipment is submitted for inspections pursuant to the provisions of California Vehicle Code, if so required by said provisions.

10. LOSS OR DAMAGE

The City assumes and shall bear the entire risk of loss or damage to the equipment. No loss or damage to the equipment, or any part thereof shall affect or impair any of the obligations of the City, and this Agreement shall continue in full force and effect notwithstanding such loss or damage to the equipment. The City shall insure the equipment according to the laws in force and effect in the State of California and such provisions shall be incorporated into the terms and conditions of this Agreement. The City shall punctually pay all insurance premiums when due in respect of any policies of insurance purchased by it or the operating contractor and the City shall provide SolTrans with copies of certificates of such insurance policies. In the event of loss or damage of any kind whatsoever to the equipment, the City shall promptly notify SolTrans of such damage. SolTrans at its sole discretion may either replace the lost or damaged equipment or alternatively direct the City to repair the damaged equipment, and the City shall comply with such direction.

11. SURRENDER

Upon the termination of this Agreement, the City shall return the equipment to SolTrans in good condition and repair, ordinary wear and tear resulting from the proper use of the equipment excepted, and the City shall, at its cost, return the equipment to SolTrans at a destination designated by SolTrans, and if the City fails to so deliver the equipment within one (1) week from the termination of this Agreement, SolTrans shall have the right to enter upon the premises where the equipment may be, and take possession of and remove it at the City's expense, all without legal process. The City covenants that, upon termination of this Agreement or upon surrender of the equipment for any other reason:

- a) The equipment shall be in good condition and repair;
- b) The records for mechanical repairs shall accompany each vehicle;
- c) Average tire tread depth for all tires shall not be less than 8mm (5/16"); and
- d) The City shall maintain insurance coverage during the period of time that the equipment is being transferred back to SolTrans.

12. LIENS AND CHARGES

The City shall, at all times, keep the equipment free from all levies, liens and encumbrances whatsoever and shall pay all license fees, registration fees and assessments, charges and taxes, which may be now or hereafter imposed directly upon the ownership, leasing, rent, possession or use of the equipment. If the City fails to pay any such levies, liens, encumbrances, assessments, charges or taxes, SolTrans may pay the same and in such event the costs thereof, together with interest calculated monthly at a rate equivalent to the prime rate established by LIBOR on the first day of each month, plus two (2%) percent per annum, shall forthwith be due and payable by the City to SolTrans. Non-payment of such costs by the City to SolTrans upon demand by SolTrans shall be deemed to be a default under this Agreement.

13. WARRANTIES

The City acknowledges that SolTrans makes no warranties, either express or implied, as to any matter whatsoever, including without limiting the generality of the foregoing, the condition of neither the equipment nor its merchantability nor its fitness for any particular purpose.

14. ASSIGNMENT, SUB-LEASE

- A. The City shall not transfer, deliver up possession of, or sublet the equipment, and the City's interest in this Agreement shall not be assignable by the City without prior written consent of SolTrans; but nothing herein contained shall prevent SolTrans from assigning, pledging, mortgaging, transferring or otherwise disposing, either in whole or in part, of SolTrans' right hereunder.
- B. The City shall have the right to manage and administer the sale of advertisement space on the equipment and retain all revenues generated from the advertising space. Advertising must adhere to the City of Fairfield Advertising Policy for Fairfield and Suisun Transit (Resolution No.2006-217).

15. INDEMNIFICATION; LIABILITY INSURANCE

- A. The City shall indemnify SolTrans against, and hold SolTrans harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities including the costs arising out of, connected with or resulting from the equipment during the term, including without limitation the installation, possession, use, operation or return of the equipment or otherwise on account of any personal injury or death or damage to property occasioned by the operation of the equipment during the term.
- B. In addition, during the term of this agreement, City shall, directly or through a third party, maintain vehicle liability insurance coverage for the vehicles listed in Attachment A, either through an insurance policy or public agency insurance pool, in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage

16. DEFAULT

Notwithstanding Section 2, the City covenants and agrees that SolTrans shall have the right to cancel and terminate this Agreement forthwith by reason of any one or more of the following events:

- a) If the City fails to perform any of the terms, conditions, covenants and provisions contained in this Agreement which on its part are to be observed and performed.
- b) If the City uses any equipment included in this Agreement unreasonably or abusively resulting in damage to such equipment or an abnormal reduction in the life of the equipment or any part thereof.

17. TERMINATION

Upon the termination of this Agreement, the City shall immediately return to SolTrans the equipment and the City shall be liable to SolTrans for damages and costs which SolTrans may sustain by reason of the City's default of this Agreement, including, without limiting the generality of the foregoing, all legal fees and other expenses incurred by SolTrans in attempting to enforce the provisions of this Agreement or to recover damages for default under this Agreement, or to recover any equipment not forthwith returned by the City to SolTrans.

18. WAIVER

No covenant or proviso contained in this Agreement to be performed by the City may be waived by SolTrans, except by prior written consent of SolTrans, and any forbearance or indulgence by SolTrans in this regard shall not constitute its waiver of such covenant or proviso to be performed by the City.

19. TIME OF THE ESSENCE

Time is to be of the essence of this Agreement and each and all of its provisions.

20. INTERPRETATION

It is agreed by and between the parties that wherever the singular or masculine is used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic respectively and vice versa, where the context or the parties so require. This agreement shall be interpreted as if jointly developed such that its language is not construed against a party for having prepared the document.

21. GOVERNING, LAW


This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

22. EXECUTORS, ADMINISTRATORS AND ASSIGNS



This Agreement shall ensure to the benefit of and be binding upon the parties, and their respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

SOLANO COUNTY TRANSIT

By: 
MONA BABAUTA
Executive Director

CITY OF FAIRFIELD

By: 
DAVID A. WHITE 
City Manager

APPROVED AS TO FORM:


SOLTRANS LEGAL COUNSEL

APPROVED AS TO FORM:


CITY ATTORNEY

ATTACHMENT A

LIST OF VEHICLES UNDER THIS AGREEMENT

Solano Express Bus #	Make	Year	VIN
679	MCI	2001	1M8PDMPA01P053963
680	MCI	2002	1M8PDMPA13P055630
681	MCI	2002	1M8PDMPA33P055631
682	MCI	2002	1M8PDMPA13P055627
683	MCI	2002	1M8PDMPA33P055628
684	MCI	2002	1M8PDMPA33P055614
685	MCI	2002	1M8PDMPA93P055617
686	MCI	2002	1M8PDMPA23P055636
687	MCI	2002	1M8PDMPA43P055637
688	MCI	2002	1M8PDMPA83P055639

ATTACHMENT B

Federal Clauses and Other Requirements

1. Charter Bus Requirements and School Bus Requirements

Charter Bus Requirements:

The City agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Requirements:

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, City and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

2. Energy Conservation

City agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

3. Clean Water

(1) The City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The City agrees to report each violation to SolTrans and understands and agrees that SolTrans will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

4. Access to Records

The following access to records requirements apply to this Contract:

1. The City agrees to provide SolTrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the City which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the City's records and construction sites pertaining to a major capital

project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. The City agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The City agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the City agrees to maintain same until SolTrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).

5. Federal Changes

The City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA), between SolTrans and FTA, as they may be amended or promulgated from time to time during the term of this contract. City's failure to so comply shall constitute a material breach of this contract.

6. Clean Air

The City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

7. No Government Obligation to Third Parties

SolTrans and the City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SolTrans, the City, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

8. Program Fraud and False or Fraudulent Statements or Related Acts.

(a) The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.

(b) The City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the City, to the extent the Federal Government deems appropriate.

9. Privacy Act

The following requirements apply to the City and its employees that administer any system of records on behalf of the Federal Government under any contract:

The City agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the City agrees to obtain the express consent of the Federal Government before the City or its employees operate a system of records on behalf of the Federal Government. The City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

10. Civil Rights

The following requirements apply to the underlying contract:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the City agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the City agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the City agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities

undertaken in the course of the Project. The City agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the City agrees to comply with any implementing requirements FTA may issue.

(ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the City agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the City agrees to comply with any implementing requirements FTA may issue.

(iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the City agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the City agrees to comply with any implementing requirements FTA may issue.

11. Transit Employee Protective Arrangements.

(1) The City agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the City agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R.

Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The City agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves

transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the City agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The City agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the City agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The City also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

12. Incorporation of FTA 4220.1F Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The City shall not perform any act, fail to perform any act, or refuse to comply with any SolTrans request, which would cause SolTrans to be in violation of the FTA terms and conditions.